

AMENDED IN SENATE DECEMBER 17, 2009

AMENDED IN SENATE APRIL 13, 2009

**SENATE BILL**

**No. 711**

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**Introduced by Senator Leno**

February 27, 2009

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~~An act to amend Sections 54954.5, 54957.1, and 54957.6 of the An~~  
*act to amend Section 54957.6 of the Government Code, relating to*  
public meetings.

LEGISLATIVE COUNSEL'S DIGEST

SB 711, as amended, Leno. Public meetings: closed sessions: labor negotiations.

(1) The Ralph M. Brown Act requires the meetings of the legislative body of a local agency to be conducted openly and publicly, with specified exceptions. Under the act, the legislative body of a local agency may hold a closed session with the local agencies' designated representatives regarding negotiations concerning employee compensation, *among other things*, but is required, in an open and public session prior to those closed sessions, to disclose specified information identifying the agency's designated representatives. ~~Existing law prohibits a closed session from including any final action on the proposed compensation of unrepresented employees. The act also requires the legislative body of a local agency to publicly report any action taken in closed session, as prescribed, including the approval of an agreement concluding labor negotiations with represented employees after the agreement is final and has been accepted or ratified by the other party. The act provides a legislative body or elected official is not in violation of certain provisions of the act if the agenda that describes~~

~~a closed session item is in substantial compliance by including specified information.~~

~~This bill would additionally require a local agency, before holding a closed session regarding employee compensation, to identify the employee or class of employees that are the subject of the negotiations, the representatives of the employees, and to provide an oral report by its designated representative on the current status of the negotiations. The bill would additionally require any action of the legislative body on the collective bargaining agreement or initial proposal to be taken at an open and public session.~~

~~The bill would revise the prohibition against a closed session for these purposes and require any final action taken pursuant to a closed session to be conducted during an open and public regular meeting of the legislative body, but only after specified public disclosures. The bill would also make a conforming change to delete the requirement that the legislative body publicly report the action taken in closed session after the agreement is final. The bill would also make conforming changes to the information required to be included in an agenda describing a closed session, for purposes of compliance with the act.~~

~~The bill would impose a state-mandated local program by imposing new duties upon local agencies.~~

*This bill would additionally require a local agency, before holding a closed session, as described above, for the purpose of having designated representatives report on a collectively bargained agreement with represented employees, to make the agreement publicly available at least 15 calendar days before the meeting at which the agreement is to be reported, thus imposing a state-mandated local program.*

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 54957.6 of the Government Code is*  
2     *amended to read:*

3     54957.6. (a) (1) Notwithstanding any other ~~provision of law,~~  
4     a legislative body of a local agency may hold ~~a closed session~~  
5     *session pursuant to this section* with the local agency's designated  
6     representatives regarding the salaries, salary schedules, or  
7     compensation paid in the form of fringe benefits of its represented  
8     and unrepresented employees, and, for represented employees,  
9     any other matter within the statutorily provided scope of  
10    representation.

11    ~~However, prior to the~~

12    (2) *Before holding a closed session pursuant to paragraph (1),*  
13    the legislative body of the local agency shall hold an open and  
14    public session in which it identifies its designated representatives.

15    (3) *If the closed session held pursuant to paragraph (1) is held*  
16    *for the purpose of having designated representatives report on a*  
17    *collectively bargained agreement with represented employees, the*  
18    *local agency shall make the agreement publicly available at least*  
19    *15 calendar days before the meeting at which the agreement is to*  
20    *be reported.*

21    ~~Closed sessions of a legislative body of a local agency, as~~  
22    ~~permitted in this section,~~

23    (b) *A closed session of a legislative body of a local agency*  
24    *authorized pursuant to this section is subject to all of the following*  
25    *conditions:*

26    (1) *The closed session shall be only for the purpose of reviewing*  
27    *its the position of the local agency and instructing the local*  
28    *agency's designated representatives.*

29    ~~Closed sessions, as permitted in this section,~~

30    (2) *The closed session may only take place prior to and during*  
31    consultations and discussions with representatives of employee  
32    organizations and unrepresented employees.

33    ~~Closed sessions~~

34    (3) *The closed session with the local agency's designated*  
35    representative regarding the salaries, salary schedules, or  
36    compensation paid in the form of fringe benefits may include  
37    discussion of an agency's available funds and funding priorities,

1 but only insofar as these discussions relate to providing instructions  
2 to the local agency's designated representative.

3 ~~Closed sessions~~

4 (4) *The closed session* held pursuant to this section shall not  
5 include final action on the proposed compensation of one or more  
6 unrepresented employees.

7 ~~For~~

8 (c) *For* the purposes enumerated in this section, a legislative  
9 body of a local agency may also meet with a state conciliator who  
10 has intervened in the proceedings.

11 (b)

12 (d) For the purposes of this section, ~~the term "employee" shall~~  
13 ~~include~~ *includes* an officer or an independent contractor who  
14 functions as an officer or an employee, but shall not include ~~any~~  
15 *an* elected official, member of a legislative body, or other  
16 independent ~~contractors~~ *contractor*.

17 *SEC. 2. If the Commission on State Mandates determines that*  
18 *this act contains costs mandated by the state, reimbursement to*  
19 *local agencies and school districts for those costs shall be made*  
20 *pursuant to Part 7 (commencing with Section 17500) of Division*  
21 *4 of Title 2 of the Government Code.*

22 ~~SECTION 1. Section 54954.5 of the Government Code is~~  
23 ~~amended to read:~~

24 ~~54954.5. For purposes of describing closed session items~~  
25 ~~pursuant to Section 54954.2, the agenda may describe closed~~  
26 ~~sessions as provided below. No legislative body or elected official~~  
27 ~~shall be in violation of Section 54954.2 or 54956 if the closed~~  
28 ~~session items were described in substantial compliance with this~~  
29 ~~section. Substantial compliance is satisfied by including the~~  
30 ~~information provided below, irrespective of its format.~~

31 ~~(a) With respect to a closed session held pursuant to Section~~  
32 ~~54956.7:~~

33 ~~LICENSE/PERMIT DETERMINATION~~

34 ~~Applicant(s): (Specify number of applicants)~~

35 ~~(b) With respect to every item of business to be discussed in~~  
36 ~~closed session pursuant to Section 54956.8:~~

37 ~~CONFERENCE WITH REAL PROPERTY NEGOTIATORS~~

38 ~~Property: (Specify street address, or if no street address, the~~  
39 ~~parcel number or other unique reference, of the real property under~~  
40 ~~negotiation)~~

1 Agency negotiator: (Specify names of negotiators attending the  
2 closed session) (If circumstances necessitate the absence of a  
3 specified negotiator, an agent or designee may participate in place  
4 of the absent negotiator so long as the name of the agent or  
5 designee is announced at an open session held prior to the closed  
6 session.)

7 Negotiating parties: (Specify name of party (not agent))

8 Under negotiation: (Specify whether instruction to negotiator  
9 will concern price, terms of payment, or both)

10 (e) With respect to every item of business to be discussed in  
11 closed session pursuant to Section 54956.9:

12 ~~CONFERENCE WITH LEGAL COUNSEL—EXISTING~~  
13 ~~LITIGATION~~

14 (Subdivision (a) of Section 54956.9)

15 Name of case: (Specify by reference to claimant's name, names  
16 of parties, case or claim numbers)

17 or

18 Case name unspecified: (Specify whether disclosure would  
19 jeopardize service of process or existing settlement negotiations)

20 ~~CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED~~  
21 ~~LITIGATION~~

22 Significant exposure to litigation pursuant to subdivision (b) of  
23 Section 54956.9: (Specify number of potential cases)

24 (In addition to the information noticed above, the agency may  
25 be required to provide additional information on the agenda or in  
26 an oral statement prior to the closed session pursuant to  
27 subparagraphs (B) to (E), inclusive, of paragraph (3) of subdivision  
28 (b) of Section 54956.9.)

29 Initiation of litigation pursuant to subdivision (c) of Section  
30 54956.9: (Specify number of potential cases)

31 (d) With respect to every item of business to be discussed in  
32 closed session pursuant to Section 54956.95:

33 ~~LIABILITY CLAIMS~~

34 Claimant: (Specify name unless unspecified pursuant to Section  
35 54961)

36 Agency claimed against: (Specify name)

37 (e) With respect to every item of business to be discussed in  
38 closed session pursuant to Section 54957:

39 ~~THREAT TO PUBLIC SERVICES OR FACILITIES~~

1     ~~Consultation with: (Specify name of law enforcement agency~~  
2     ~~and title of officer, or name of applicable agency representative~~  
3     ~~and title)~~  
4     ~~PUBLIC EMPLOYEE APPOINTMENT~~  
5     ~~Title: (Specify description of position to be filled)~~  
6     ~~PUBLIC EMPLOYMENT~~  
7     ~~Title: (Specify description of position to be filled)~~  
8     ~~PUBLIC EMPLOYEE PERFORMANCE EVALUATION~~  
9     ~~Title: (Specify position title of employee being reviewed)~~  
10    ~~PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE~~  
11    ~~(No additional information is required in connection with a~~  
12    ~~closed session to consider discipline, dismissal, or release of a~~  
13    ~~public employee. Discipline includes potential reduction of~~  
14    ~~compensation.)~~  
15    ~~(f) With respect to every item of business to be discussed in~~  
16    ~~closed session pursuant to Section 54957.6:~~  
17    ~~CONFERENCE WITH LABOR NEGOTIATORS~~  
18    ~~Agency designated representatives: (Specify names of designated~~  
19    ~~representatives attending the closed session) (If circumstances~~  
20    ~~necessitate the absence of a specified designated representative,~~  
21    ~~an agent or designee may participate in place of the absent~~  
22    ~~representative so long as the name of the agent or designee is~~  
23    ~~announced at an open session held prior to the closed session.)~~  
24    ~~The employee or class of employees that are the subject of the~~  
25    ~~negotiations~~  
26    ~~Representative of the employees~~  
27    ~~Employee organization: (Specify name of organization~~  
28    ~~representing employee or employees in question)~~  
29    ~~or~~  
30    ~~Unrepresented employee: (Specify position title of unrepresented~~  
31    ~~employee who is the subject of the negotiations)~~  
32    ~~Oral reports by agency's designated representative on the current~~  
33    ~~status of the negotiations~~  
34    ~~(g) With respect to closed sessions called pursuant to Section~~  
35    ~~54957.8:~~  
36    ~~CASE REVIEW/PLANNING~~  
37    ~~(No additional information is required in connection with a~~  
38    ~~closed session to consider case review or planning.)~~  
39    ~~(h) With respect to every item of business to be discussed in~~  
40    ~~closed session pursuant to Sections 1461, 32106, and 32155 of the~~

~~Health and Safety Code or Sections 37606 and 37624.3 of the Government Code:~~

~~REPORT INVOLVING TRADE SECRET~~

~~Discussion will concern: (Specify whether discussion will concern proposed new service, program, or facility)~~

~~Estimated date of public disclosure: (Specify month and year)~~

~~HEARINGS~~

~~Subject matter: (Specify whether testimony/deliberation will concern staff privileges, report of medical audit committee, or report of quality assurance committee)~~

~~(i) With respect to every item of business to be discussed in closed session pursuant to Section 54956.86:~~

~~CHARGE OR COMPLAINT INVOLVING INFORMATION PROTECTED BY FEDERAL LAW~~

~~(No additional information is required in connection with a closed session to discuss a charge or complaint pursuant to Section 54956.86.)~~

~~(j) With respect to every item of business to be discussed in closed session pursuant to Section 54956.96:~~

~~CONFERENCE INVOLVING A JOINT POWERS AGENCY (Specify by name)~~

~~Discussion will concern: (Specify closed session description used by the joint powers agency)~~

~~Name of local agency representative on joint powers agency board: (Specify name)~~

~~(Additional information listing the names of agencies or titles of representatives attending the closed session as consultants or other representatives.)~~

~~(k) With respect to every item of business to be discussed in closed session pursuant to Section 54956.75:~~

~~AUDIT BY BUREAU OF STATE AUDITS~~

~~SEC. 2. Section 54957.1 of the Government Code is amended to read:~~

~~54957.1. (a) The legislative body of any local agency shall publicly report any action taken in closed session and the vote or abstention on that action of every member present, as follows:~~

~~(1) Approval of an agreement concluding real estate negotiations pursuant to Section 54956.8 shall be reported after the agreement is final, as follows:~~

1     (A) If its own approval renders the agreement final, the body  
2 shall report that approval and the substance of the agreement in  
3 open session at the public meeting during which the closed session  
4 is held.

5     (B) If final approval rests with the other party to the negotiations,  
6 the local agency shall disclose the fact of that approval and the  
7 substance of the agreement upon inquiry by any person, as soon  
8 as the other party or its agent has informed the local agency of its  
9 approval.

10    (2) Approval given to its legal counsel to defend, or seek or  
11 refrain from seeking appellate review or relief, or to enter as an  
12 amicus curiae in any form of litigation as the result of a  
13 consultation under Section 54956.9 shall be reported in open  
14 session at the public meeting during which the closed session is  
15 held. The report shall identify, if known, the adverse party or  
16 parties and the substance of the litigation. In the case of approval  
17 given to initiate or intervene in an action, the announcement need  
18 not identify the action, the defendants, or other particulars, but  
19 shall specify that the direction to initiate or intervene in an action  
20 has been given and that the action, the defendants, and the other  
21 particulars shall, once formally commenced, be disclosed to any  
22 person upon inquiry, unless to do so would jeopardize the agency's  
23 ability to effectuate service of process on one or more unserved  
24 parties, or that to do so would jeopardize its ability to conclude  
25 existing settlement negotiations to its advantage.

26    (3) Approval given to its legal counsel of a settlement of pending  
27 litigation, as defined in Section 54956.9, at any stage prior to or  
28 during a judicial or quasi-judicial proceeding shall be reported  
29 after the settlement is final, as follows:

30    (A) If the legislative body accepts a settlement offer signed by  
31 the opposing party, the body shall report its acceptance and identify  
32 the substance of the agreement in open session at the public  
33 meeting during which the closed session is held.

34    (B) If final approval rests with some other party to the litigation  
35 or with the court, then as soon as the settlement becomes final,  
36 and upon inquiry by any person, the local agency shall disclose  
37 the fact of that approval, and identify the substance of the  
38 agreement.

39    (4) Disposition reached as to claims discussed in closed session  
40 pursuant to Section 54956.95 shall be reported as soon as reached



1 in a manner that identifies the name of the claimant, the name of  
2 the local agency claimed against, the substance of the claim, and  
3 any monetary amount approved for payment and agreed upon by  
4 the claimant.

5 ~~(5) Action taken to appoint, employ, dismiss, accept the~~  
6 ~~resignation of, or otherwise affect the employment status of, a~~  
7 ~~public employee in closed session pursuant to Section 54957 shall~~  
8 ~~be reported at the public meeting during which the closed session~~  
9 ~~is held. Any report required by this paragraph shall identify the~~  
10 ~~title of the position. The general requirement of this paragraph~~  
11 ~~notwithstanding, the report of a dismissal or of the nonrenewal of~~  
12 ~~an employment contract shall be deferred until the first public~~  
13 ~~meeting following the exhaustion of administrative remedies, if~~  
14 ~~any.~~

15 ~~(6) Pension fund investment transaction decisions made pursuant~~  
16 ~~to Section 54956.81 shall be disclosed at the first open meeting of~~  
17 ~~the legislative body held after the earlier of the close of the~~  
18 ~~investment transaction or the transfer of pension fund assets for~~  
19 ~~the investment transaction.~~

20 ~~(b) Reports that are required to be made pursuant to this section~~  
21 ~~may be made orally or in writing. The legislative body shall provide~~  
22 ~~to any person who has submitted a written request to the legislative~~  
23 ~~body within 24 hours of the posting of the agenda, or to any person~~  
24 ~~who has made a standing request for all documentation as part of~~  
25 ~~a request for notice of meetings pursuant to Section 54954.1 or~~  
26 ~~54956, if the requester is present at the time the closed session~~  
27 ~~ends, copies of any contracts, settlement agreements, or other~~  
28 ~~documents that were finally approved or adopted in the closed~~  
29 ~~session. If the action taken results in one or more substantive~~  
30 ~~amendments to the related documents requiring retyping, the~~  
31 ~~documents need not be released until the retyping is completed~~  
32 ~~during normal business hours, provided that the presiding officer~~  
33 ~~of the legislative body or his or her designee orally summarizes~~  
34 ~~the substance of the amendments for the benefit of the document~~  
35 ~~requester or any other person present and requesting the~~  
36 ~~information.~~

37 ~~(c) The documentation referred to in subdivision (b) shall be~~  
38 ~~available to any person on the next business day following the~~  
39 ~~meeting in which the action referred to is taken or, in the case of~~  
40 ~~substantial amendments, when any necessary retyping is complete.~~

~~(d) Nothing in this section shall be construed to require that the legislative body approve actions not otherwise subject to legislative body approval.~~

~~(e) No action for injury to a reputational, liberty, or other personal interest may be commenced by or on behalf of any employee or former employee with respect to whom a disclosure is made by a legislative body in an effort to comply with this section.~~

~~(f) This section is necessary to implement, and reasonably within the scope of, paragraph (1) of subdivision (b) of Section 3 of Article I of the California Constitution.~~

~~SEC. 3. Section 54957.6 of the Government Code is amended to read:~~

~~54957.6. (a) (1) Notwithstanding any other law, a legislative body of a local agency may hold a closed session pursuant to this section with the local agency's designated representatives regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees, and, for represented employees, any other matter within the statutorily provided scope of representation.~~

~~(2) Before holding a closed session pursuant to paragraph (1), the legislative body of the local agency shall hold an open and public session in which it does all of the following:~~

~~(A) Identifies the agency's designated representatives, the employee or class of employees that are the subject of the negotiations, and the representatives of the employees.~~

~~(B) Provides an oral report by its designated representative on the current status of the negotiations.~~

~~(3) The notice required by subparagraph (A) of paragraph (2) may be given orally or as part of the meeting agenda.~~

~~(b) A closed session of a legislative body of a local agency authorized pursuant to this section is subject to all of the following conditions:~~

~~(1) The closed session shall be only for the purpose of reviewing the position of the local agency and instructing the local agency's designated representatives.~~

~~(2) The closed session may only take place prior to and during consultations and discussions with representatives of employee organizations and unrepresented employees.~~

1     ~~(3) The closed session may include discussion of an agency's~~  
2     ~~available funds and funding priorities, but only insofar as these~~  
3     ~~discussions relate to providing instructions to the local agency's~~  
4     ~~designated representative.~~

5     ~~(4) The closed session shall not include any final action.~~

6     ~~(e) Any final action on an agreement subject to this section shall~~  
7     ~~be conducted during an open and public regular meeting of the~~  
8     ~~legislative body. The proposed agreement and a summary of its~~  
9     ~~major provisions, including, but not limited to, the costs that would~~  
10    ~~be incurred by the local agency under the agreement for the current~~  
11    ~~and subsequent fiscal years, shall be disclosed at a public meeting.~~  
12    ~~Final action shall not take place on any proposal until a reasonable~~  
13    ~~time has elapsed after disclosure of the proposal to enable the~~  
14    ~~public to become informed and the public has the opportunity to~~  
15    ~~express itself regarding the proposal at a meeting of the legislative~~  
16    ~~body.~~

17    ~~(d) For the purposes enumerated in this section, a legislative~~  
18    ~~body of a local agency may also meet with a state conciliator who~~  
19    ~~has intervened in the proceedings.~~

20    ~~(e) For the purposes of this section, "employee" includes an~~  
21    ~~officer or an independent contractor who functions as an officer~~  
22    ~~or an employee, but shall not include an elected official, member~~  
23    ~~of a legislative body, or other independent contractor.~~

24    ~~SEC. 4. If the Commission on State Mandates determines that~~  
25    ~~this act contains costs mandated by the state, reimbursement to~~  
26    ~~local agencies and school districts for those costs shall be made~~  
27    ~~pursuant to Part 7 (commencing with Section 17500) of Division~~  
28    ~~4 of Title 2 of the Government Code.~~